

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPEAL NO. 777 OF 2003

Mr. Datta Age - 35 Residing at Kalatenagar, Mulshi, (At present Central Prison, Pune 411 006)	Kisan years, - Walad, Dist. detained in ..Appellant (Org.Accused)	More Labour, Shankar Taluka Pune Yerawada
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Vs.

State (Through Paud Police Station, Pune.)	of Officer ..Respondent	Maharashtra in-charge,
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Mr. Daulat G. Khamkar	for appellant.	
Mr. A.S. Gadkari, APP	for respondent-State.	

CORAM: B.H. MARLAPALLE & R.S. MOHITE,JJ.

Date : February 06 & 07, 2007.

ORAL JUDGMENT (PER B.H. MARLAPALLE,J.):

1. The appellant-accused was put on trial before the Additional Sessions Judge at Pune in Sessions Case No. 267 of 2002 for the offences punishable under Sections 302, 498-A and 203 of IPC and by the Judgment and Order dated 24/4/2003 he has been convicted and sentenced for the said offences.

2. The prosecution case, in short, is that the

deceased Shamal was the wife of the appellant and in the night of 27/1/2002, leading to the morning of 28/1/2002, she was found dead in the appellant's house at about 6 a.m. and the appellant thereafter filed a complaint at Exh.45 with the police station stating that on 28/1/2002 he got up around 6 a.m. in the morning and went out for attending to the nature's call. On his return, within a short time, he tried to wake up his wife but there was no movement and, therefore, neighbours arrived and it was confirmed that Shamal was dead. Case of accidental death was recorded by the police out-post Wakad under the Paud Police Station, Pune. The parents of the deceased were given information on telephone and from their village Bardhapur, Ambejogai Taluka, Beed District they arrived at Pune on the same date i.e. 28/1/2002. P.W. 12 Mangesh Virnak, Assistant Sub Inspector visited the house of the accused on the same day and noticed some marks around the neck of the deceased and, therefore, on his suspicion he forwarded the dead body for post mortem to the Medical Officer, Pimpri-Chinchwad Municipal Hospital. Autopsy was conducted between 7.45 p.m. to 8.35 p.m. on 28/1/2002 and as per the Medical Officer, who

submitted the post mortem report at Exh.35 the cause of death recorded was "Asphyxia due to compression of neck with evidence of head injury present". The histo-pathological report was obtained on 2/3/2002 by the Medical Officer and he confirmed the provisional opinion as the final opinion for the cause of death. In the meanwhile, after receiving the post mortem report P.W.12 filed the complaint at Exh.46 at about 8.30 a.m. on 29/1/2002 and on the basis of which the accused was taken in custody on the same day. His clothes were seized, samples of his finger nails were taken and the investigation was taken over by PW 11 Sunil Khaladkar who, in the process, recorded the statements of the neighbours Kusum Mohite (PW 6), Radhabai Khadtare (PW 7) and some other neighbours. He also recorded the statement of PW 3 Devidas Jagtap, father of the deceased and PW 4 Vijaykumar Jagtap, brother of the deceased. Inquest Panchanama was drawn at Exh.37 by the Investigating Officer with P.W.9 Mahadev Jadhav as one of the witnesses therefor. Seized articles were sent for chemical analysis. On completion of investigation, charge-sheet came to be filed and charge was framed against the accused on 15/1/2003.

3. The prosecution examined in all 12 witnesses.

However, the panch witnesses i.e. Bhagwat Raut (PW 1), Sakharam Bokephode (PW 2) and Ganesh Khilare (PW 5) were found to be untrustworthy and their evidence has been discarded by the trial court. The prosecution case is totally based on the circumstantial evidence read with the medical evidence. When the statement of the accused was recorded under Section 313 of Cr.P.C., he stated that he wanted to file defence statement and the police had filed a false case against him. He also wanted to produce some documents in respect of the panchas to prove that they were habitual panchas. Accordingly the accused had filed written defence statement at Exh.49 and taken a plea that Vishnu Khadtare (PW 10) had illicit relationship with the deceased and when it became public, the deceased had picked up a quarrel with him. PW 10 was, therefore, annoyed and he entered the house of the accused when the accused had gone to attend to the nature's call in the morning of 28/1/2002 and with the help of other persons killed his wife and these persons along with PW 10 were seen running out from his house by the residents of the

opposite house i.e. Hanumant Mannekari and Dasharath Jagtap. We have also noted through the evidence of PW 6 and PW 7 that the accused, who was on the spot at 6 a.m. on 28/1/2002, had taken another defence plea that his wife died on account of stomach-ache. Thus he had taken two different defences.

4. Dr. Milind Sonawane (PW 8), the Medical Officer, who conducted the post mortem, in his examination-in-chief before the trial court stated that on the dead body of Shamal he found the following external and internal injuries:-

External Injuries :

1. Brownish black ligature marks starting from left border of posterior aspect of neck measuring 3.5 cm. Ligature marks initially are three in number in the form of imprint contused abrasion, which initially runs parallel and then meets together after covering 3-4 cm. in front and further ligature mark passes as a single mark and passes 4.5 cm. below left ear lobule and

further it becomes very faint and non visible.
 Further ligature mark shows raised firm
 swelling, size 8 x 3 cm.

2. Ligature mark seen at upper border of
 anterior part of neck 1.5 cm. above thyroid
 cartilage obliquely placed, irregular margin,
 brownish black. Further it goes upwards and
 circular imprint contused abrasion, which
 resembles a mark of thumb, size 2 x 2 cm.
 Circular mark is more deep, margins finely
 defined brownish black size 6 x 1 cm.

3. The ligature mark is non visible but firm
 raised swelling seen over then skin, uptil in
 the line of right lobule. From here the
 ligature mark is seen visible, brownish black
 in the form of contused abrasion and passes 3
 cm. below right ear lobule which is placed
 obliquely placed size 3 x 1 cm.

4. Imprint abrasion over mid chest seen in
 mid line in between breast size 5.5 cm x 0.5
 cm.

Internal Injuries:

1. Extrasvasation with haematoma seen beneath
legature mark of anterior part of neck.
2. Muscular layer shows contusion with
hemorrhages.
3. Mucosa of trachea congested with few
petechial hemorrhages.
4. Lungs partial collapse, oedematous and
severely congested.
5. Tongue was bitten in between the teeth.

. He stated before the trial court that in his
opinion the death was caused on account of three
injuries which were caused by soft ligature and
circular deep mark over anterior part of neck i.e.
due to thumb and the said injuries together had
compressed the neck and led to asphyxia. He was

subjected to a detail cross-examination by the defence and he reiterated his opinion that Shamal was done to death by pressing her neck with thumb and his opinion was not based on surmises. On the basis of this medical evidence, there is no doubt that Shamal died a homicidal death in her matrimonial home between the night of 27/1/2002 and the early hours on 28/1/2002 and this conclusion is not disputed by the learned counsel for the accused before us.

5. We are, therefore, required to consider whether the prosecution proved beyond reasonable doubt the involvement of the accused in causing the murder of his wife Shamal and in this regard we will have to consider the testimony of PW 3 Devidas Jagtap, PW 4 Vijaykumar Jagtap, PW 6 Kusum Mohite, PW 7 Radhabai Khadtare and PW 10 Vishnu Khadtare along with the evidence of the police personnel PW 11 and PW 12. PW 9 Mahadev Jadhav is the panch witness for the inquest panchanama at Exh.37 and there is no doubt that the same has been proved through his evidence as well as the I.O. PW 11. The defence taken by the accused in two different forms, namely, (a) Shamal died because of stomach-ache and (b) she was done to death by PW 10

with the help of some unknown persons has been dealt with by the prosecution.

6. The story of death on account of stomach-ache

sought to be conveyed to PW 6 Kusum Mohite and PW 7 Radhabai Khadtare cannot be accepted in view of the medical evidence in the form of the post mortem report and the depositions of PW 8 Dr. Milind Sonawane. On the second defence the prosecution examined PW 10 Vishnu Khadtare. In his examination-in-chief he stated that he was present on the date of the incident in his house which is in the neighbourhood of the house of the accused and he knew both the accused as well as his wife. The distance between his house and the house of the accused was about 100 ft. He further stated that he was present in his house in the night of 27/1/2002 and at about 6 a.m. on 28/1/2002 he came to know about the death of Shamal. He had noticed that a number of persons had gathered near the house of the accused on that day and the accused was himself present at the spot. This witness again repeated the statement of the accused made to the persons present at about 6 a.m. at his house that his wife died on account of stomach pain. In his cross-examination,

the defence tried to claim that there was a quarrel between Shamal and the witness himself and when he noticed that Shamal had become unconscious, he had run away from her house. This suggestion was flatly denied. He also denied to have entered the house of the accused in the early hours of 28/1/2002 and before he came to know that Shamal was dead. He also denied about any discussion amongst the neighbours on the previous day regarding his illicit connection with Shamal. He also denied to have been seen by a number of persons while running away from the house of the accused on 28/1/2002 in the morning hours. The defence thus failed to prove its alternative case that Shamal was done to death by someone else or by PW 10 on 28/1/2002.

6. Regarding the involvement of the accused in the murder of Shamal, the following circumstances have been proved by the prosecution:-

(a) In the night of 27/1/2002 the accused and Shamal were together in the house.

(b) At about 6 a.m. on 28/1/2002 neighbours

came to know that Shamal was no more and they had gathered at the house of the accused where he was physically present.

(c) The accused failed to prove that he had gone out of his house for about half an hour in the early hours of 28/1/2002 by leading evidence of the neighbours or the occupants of the opposite house.

(d) Blood stains were detected on his finger nails and as per the C.A. report it was human blood. He failed to explain the source of human blood on his nails.

(e) He had taken a false defence by disclosing to the neighbours that Shamal died due to stomach-ache and at the same time the complaint at Exh.45 filed by him at the police out-post Wakad did not give any such reason. On the contrary, he indicated in the said complaint that Shamal died a natural death, which he came to know after the neighbours had arrived at the spot and they confirmed that

Shamal was dead.

7. PW 3 Devidas Jagtap, the father of the deceased, stated that the marriage of the accused with Shamal had taken place about 10 years ago and from the said wedlock there were two children (one son and one daughter) and they were residing with the mother of the accused. The accused is a mason by profession and, therefore, had migrated to Pune and in its suburbs at Wakad, he was residing with his wife who used to also do some tailoring work. As per him the dead body of Shamal was carried to his native place on 28/1/2002 for cremation. He further stated that the deceased had met him about two months prior during Diwali festival and the accused was also with her for about 15 minutes in the house of the witness. He had requested the accused to let his daughter stay for two days with the parents, which the accused did not agree and, therefore, both left his house. During that visit the deceased had told him that the accused was wanting to perform second marriage as he did not like Shamal. The accused was beating and ill-treating Shamal. He further stated that he pacified the accused and told him not to ill-treat Shamal. This

role of the witness of pacifying the accused was sought to be contradicted in the cross-examination and the witness admitted that such a statement was not appearing in the statement recorded by the police. The witness further deposed that during the Makarsankrant of the year 2002 he had stayed with the accused for 8 to 9 days and during that period the accused had started beating Shamal. Again in the cross-examination it was brought by the defence that such a statement did not find place in his statement recorded by the police and this omission was also confirmed in the testimony of PW 11 Sunil Khaladkar, the I.O.

8. Coming to the evidence of PW 4 Vijaykumar

Jagtap, who is a truck driver by profession, he has stated that he visited his sister at Pune one month prior to the incident and this visit was during Alandi Yatra. He had stayed with the couple for two days and had asked his sister as to why she had become so weak, to which he was informed by the deceased that she was being beaten by the accused and he wanted to perform second marriage. In the cross examination, there was a suggestion that he was making false allegations

against the accused and this suggestion was denied. In his searching cross-examination conducted by the defence, there was nothing brought out to discard his statement that during the Alandi Yatra he had stayed with the accused and the deceased for two days and the deceased had told him that she had become weak on account of the beating at the hands of the accused and that the accused wanted to perform second marriage. He admitted that during the stay with his deceased sister at Pune he never made enquiries with the neighbours regarding the ill-treatment to his sister at the hands of the accused. He also admitted that he did not remember the exact dates of those two days when he stayed with his sister at Pune. He denied the suggestion that PW 10 Vishnu Khadtare had beaten his sister as neighbours had come to know regarding their illicit relationship. The evidence of both these witnesses i.e. PW 3 and PW 4 unerringly proved that the accused was beating his wife and he wanted to perform second marriage. Thus, the prosecution brought out the motive of the accused in causing the death of his wife.

. As noted earlier, Shamal was killed by

throttling and PW 8 Dr. Milind Sonawane in his
 depositions stated that the injuries noted on her dead
 body were more than 12 hours of age and within 24
 hours, prior to the post mortem examination. The post
 mortem examination had started at 7.45 p.m. on
 28/1/2002, which clearly indicated that Shamal was
 done to death in the night of 27/1/2002 leading to the
 morning of 28/1/2002. There were no other injuries on
 her body noticed by the Medical Officer and,
 therefore, the entry of any third person or an alien
 in the house of the accused prior to the neighbours
 coming and gathering in his house at 6 a.m. on
 28/1/2002 is ruled out. The accused tried to take a
 false defence and also attempted to mislead the police
 by filing complaint at Exh.45 that too belatedly at
 about 6 p.m. on 28/1/2002. He also misled the
 neighbours i.e. PW 6, PW 7 and PW 10. Spot
 panchanama did not show any indication that the door
 of the house of the accused was broken down and a
 forcible entry into the said house was made by any
 other person. Under these circumstances, the findings
 recorded by the trial court that the circumstantial
 evidence adduced by the prosecution undoubtedly proved
 the involvement of the accused in causing the death of

Shamal is required to be upheld. We are satisfied that there was no missing link in the circumstantial evidence of the prosecution so as to doubt the involvement of the accused in causing Shamal's death in the night of 27/1/2002.

9. However, while dealing with the conviction and sentence under Section 498-A of IPC, on scanning the evidence placed before the trial court, we do not agree with the findings recorded by the trial court. Section 498-A of IPC is divided in two parts in terms of the explanation below it. Explanation (b) below Section 498-A is not applicable in the instant case and, therefore, we will have to consider clause (a) of the explanation, which states that any wilful conduct which is of such a nature as is likely to drive the woman to commit suicide or to cause grave injury or danger to life, limb or health (whether mental or physical) of the woman amounts to cruelty. It was necessary for the trial court to examine whether the conduct of the accused over a period of time prior to the incident was of such a nature as to cause grave injury or danger to life, limb or health of his wife and whether such a conduct was wilful. As we have

noted earlier, though the prosecution proved the motive behind the commission of offence punishable under Section 302 of IPC, there is nothing on record regarding the wilful conduct of the accused subjecting his wife to cruelty within the meaning of Section 498-A, Explanation clause (a) of IPC. In this regard we may usefully rely upon the decision of the Apex Court in the case of Girdhar Shankar Tawade vs. State of Maharashtra **[2002 AIR SCW 2140]**. We, therefore, do not agree with the findings of the trial court in regard to the offence punishable under Section 498-A of IPC and, therefore, the order of conviction and sentence for the said offence is unsustainable.

10. The learned counsel for the appellant has relied upon the decision of the Andhra Pradesh High Court (DB) in the case of Nagireddi Siva @ Chanti & anr. vs. The State **[1992(1) Crimes 409]** in support of his contentions that merely because the accused had given false information or had failed to prove his innocence, is no ground to base the order of conviction against him. We cannot have any dispute with such a proposition. However, the evidence led by the prosecution and which has been believed by us

undoubtedly proves the involvement of the accused in causing the death of his wife and by strangulation. In the very said decision, the Andhra Pradesh High Court in para 17, while dealing with the charge under Section 203 stated that the ingredients necessary to be satisfied so as to constitute an offence under the said section are as under:-

(a) that an offence has been committed,

(b) that the accused knew or had reason to believe that such an offence had been committed,

(c) that he had the information with respect to that offence,

(d) that the information so given was false,

(e) that when he gave such information he knew or believed it to be false.

. In the instant case when the accused filed the complaint at Exh.45 at about 6 p.m. with the police

out-post at Wakad, he knew that his wife was dead and the death was not natural and he gave a false information that neighbours had gathered in his house at about 6 a.m. and they confirmed that his wife was no more. Under these circumstances, we uphold the findings of the trial court that the accused is guilty of an offence punishable under Section 302 of IPC.

11. In the premises, this appeal succeeds partly.

The order of conviction and sentence passed against the accused under Section 498-A of IPC is hereby quashed and set aside. The order of conviction and sentence passed against the accused under Sections 302 and 203 of IPC is hereby confirmed.

(R.S. Mohite, J.)

(B.H. Marlapalle, J.)